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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

and)

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

PP Docket No. 93-253

REPLY COMMENTS OF ONECOMM CORPORATION

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SUMMARY

OneComm Corporation ("OneComm") supports the developing consensus, embodied in the AMTA Consensus Plan, for implementing a new regulatory scheme for 800 MHz specialized mobile radio ("SMR") services. The AMTA Consensus Plan provides the opportunity for wide-area SMRs to achieve regulatory parity with other commercial mobile radio services providers ("CMRS") and to vigorously compete with such providers while protecting the viability of local SMR systems. OneComm believes that the AMTA Consensus Plan combines the proper incentives, protections, and mandatory measures that best meet stated Commission objectives.

Statutorily-mandated regulatory parity for CMRS providers requires that SMR providers have, at a minimum, geographic licensing, contiguous spectrum, and sufficient bandwidth, as well as flexible, operational rules comparable to those afforded other CMRS providers.

OneComm therefore concurs that a workable 800 SMR regulatory plan should include the following elements: (1) The upper 200 channel band licenses should be awarded on a BEA basis by competitive bidding. (2) The upper 200 channel band should be licensed in a single 200 channel block or two blocks of 120 and 80 channels each. (3) Incumbent licensees should be given incentives to voluntarily reconfigure to other comparable frequencies in the first year after issuance of BEA licenses. (4) The BEA licensee must give

notice to incumbents of its intent to reconfigure, must provide comparable spectrum and fully reimburse reconfiguration costs. (5) In order to mandatorily reconfigure incumbents in the second year after a BEA license issues, the BEA licensee must submit a showing to the FCC that agreement has been reached with other licensees in the upper 200 channel band for channels representing 80 per cent of the total number of constructed channels in the BEA. In the third and fourth years, the percentage should drop to 65 and 50 per cent respectively.

OneComm further concurs with AMTA in recommending that lower band frequencies should continue under existing licensing rules for the first five years to accommodate upper band auctions and reconfiguration. After five years, however, auctions and BEA licensing should likewise be introduced in the lower band. At all times, however, SMR licensees in the lower band should be able to expand to wide-area systems, receive extended implementation authorization, and voluntarily request BEA licensing.

Moreover, existing extended implementation authorizations should be honored. Such authorizations are akin to cellular and PCS build-out requirements and are essential to the successful development of advanced SMR systems.

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REPLY COMMENTS OF ONECOMM CORPORATION

OneComm Corporation ("OneComm"), pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") Rules and Regulations, hereby submits its Reply Comments in the captioned proceeding. The Commission's Further Notice of Proposed Rule Making ("FNPRM"), released November 4, 1994, requested comment on a new regulatory scheme for 800 MHz specialized mobile radio ("SMR") services. OneComm submitted Comments on January 5, 1995, and now responds to other initial comments and to recent industry efforts to develop a consensus position on the most significant issues raised in this proceeding.

I. INTRODUCTION AND BACKGROUND

The Commission has the opportunity in this proceeding to promote full-fledged competition between specialized mobile radio ("SMR") service and cellular and personal communications services ("PCS") and to ensure regulatory parity for commercial mobile radio service ("CMRS") providers. In fact, the Commission itself has confirmed that its "overriding goal in the CMRS proceeding has been to achieve regulations that maximize competition among CMRS providers and to eliminate regulatory distortions in the mobile services market. To that end, the Commission defined four objectives for new SMR rules;¹ (1) promote the development of wide-area systems while protecting the viability of smaller systems; (2) ensure prompt construction and operation of SMR systems; (3) encourage more efficient use of SMR spectrum through introduction of advanced technology and services; and (4) remove regulatory burdens hampering the efforts of 800 MHz SMR systems to compete with other CMRS offerings.²

The Commission proposed to:

1 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Further Notice of Proposed Rulemaking, FCC 94-271, at 5 (released November 4, 1994) ("FNPRM"). References to SMR rules denote 800 MHz SMR rules, unless otherwise stated.

2 FNPRM at 12.

(1) designate 10 MHz (200 channels) of contiguous spectrum for licensing in four 2.5 MHz blocks within each Major Trading Area ("MTA");³

(2) designate the remaining 80 non-contiguous 800 MHz SMR channels for local licensing on a channel-by-channel basis with operational rules similar to existing SMR rules;

(3) auction mutually exclusive applications;

(4) grant MTA licensees the right to; (a) self-coordinated construction, frequency use, and channelization over all of the licensed MTA frequency block, (b) automatic use of any frequencies within the licensed MTA frequency block that are recovered by the Commission, and (c) voluntary, negotiated frequency relocation of incumbent licensees;

(5) require the MTA licensee to provide service to one-third of the MTA population within three years, and two-thirds within five years of license issuance;

(6) permit incumbent SMR systems to continue operating under existing authorizations and receive co-channel interference protection.⁴

3 The existing 806-821/851-855 MHz channel allocation plan is as follows: channels 1 - 150 are allocated to the General Category; channels 151 - 400 are allocated (by interleaved groups) to Industrial/Land Transportation, Business, Public Safety, and SMR; and channels 401 - 600 are allocated to SMR. Within channels 151 - 400, SMR has allocated to it 80 channels, referred to herein as the "80 lower" SMR channels. Channels 1 - 400 are collectively referred to herein as the "lower band" while channels 401 - 600 are referred to herein as the "upper band."

4 Id. at 10-12.

The Commission's proposal drew a wide diversity of comments, the strongest of which focused on proposals to auction upper band licenses and to implement relocation of licenses operating in the upper band. Although some commenters concurred with OneComm that MTA (or BEA) licenses should be auctioned,⁵ others argued that no spectrum exists to auction,⁶ and that only large companies would benefit from the auction.⁷

Some commenters concurred with OneComm in urging mandatory reconfiguration as part of a voluntary-to-mandatory reconfiguration process for upper band licenses.⁸ Several commenters expressed concern that sufficient spectrum for relocation is unavailable.⁹ There was considerable support for requiring reimbursement of incumbents that are reconfigured.¹⁰ It remains OneComm's position that the elements exist to achieve a workable licensing scheme for all SMR providers and that much of the opposition to SMR auctions and to required reconfiguration is greatly overstated.

5 Comments of Genessee Business Radio Systems, Inc. at 4-5; Comments of Nextel Communications, Inc. at 52-59; Comments of Morris Communications, Inc. at 4-5; Comments of Pittencrief Communications, Inc. at 5.

6 Comments of SMR Small Business Coalition 6-9.

7 Comments of The Ericsson Corporation at 4-5.

8 Comments of Advanced MobilComm, Inc. at 8; Comments of Nextel Communications, Inc. at 32-34; Comments of the Cellular Telecommunications Industry Association at 1-2, Comments of Spectrum Resources, Inc. at 4.

9 See, e.g., Comments of The Ericsson Corporation at 6-7.

It also remains OneComm's position that the achievement of regulatory parity for wide-area SMR providers requires three components: (1) geographic licensing (awarded over BEA boundaries), (2) contiguous spectrum (assembled via voluntary-to-mandatory reconfiguration), and (3) sufficient bandwidth (allocated through one 200 channel block or two blocks of 120 and 80 channels respectively). Cellular and PCS carriers already have geographic licensing over an MSA, RSA, MTA, or BTA. They also have contiguous uninterrupted spectrum and sufficient bandwidth (25 MHz for cellular, or 40, 30 or 10 MHz for PCS licensees). All three components must be available to afford wide-area SMR providers regulatory parity with other CMRS providers.

II. AMTA HAS PRESENTED THE BASIS FOR A WORKABLE LICENSING SCHEME FOR ALL SMR PROVIDERS

Subsequent to submission of its initial comments in this proceeding, OneComm actively participated in discussions with other industry participants and the deliberations of the American Mobile Telecommunications Association, Inc.'s ("AMTA") Regulatory Forum and helped to develop a consensus plan supported by AMTA members (hereinafter, "AMTA Consensus Plan"). AMTA's Board of Directors subsequently adopted the AMTA Consensus Plan.

The AMTA Consensus Plan is designed to fulfill the statutory directive to the FCC to implement comparable CMRS regulation and to ensure that incumbent licensees that may be moved from the upper band 200 channels are properly

accommodated. The AMTA Consensus Plan focuses on incentives rather than mandates, and contains three essential elements: (1) auctioned geographic frequency block licenses in the upper band, (2) contiguous spectrum assembled by progressive reconfiguration,¹¹ and (3) lower band allocations that will facilitate upper band reconfiguration and auctions.

First, the AMTA Consensus Plan includes the following upper band geographic license recommendations:

- Upper band geographic licenses should be assigned using U.S. Department of Commerce Bureau of Economic Analysis Basic Areas ("BEA") boundaries;¹²
- If BEA licenses are auctioned, preferences should be granted for incumbents within the geographic area seeking to expand existing SMR systems that include constructed channels.
- Two upper band blocks, of 120 and 80 channels respectively, would be established.

Second, the AMTA Consensus Plan recommends progressive reconfiguration as follows:

- BEA licensees must provide comparable replacement frequencies and full cost compensation to incumbent licensees, regardless of when reconfiguration occurs;
- BEA licensees must provide notice to incumbents of intent to reconfigure;

10 Comments of Motorola, Inc. at 8. Comments of SMR WON at 41-44. Comments of Communications Unlimited, Inc. at 6.

11 Reconfiguration, retuning and relocation are used interchangeably herein.

- Incumbents agreeing to voluntarily reconfigure within the first year after the effective date of final rules would receive additional benefits of existing and prospective 70 mile co-channel protection (to the extent possible), right to transfer benefits, and tax certificates where permitted by Congress;

- After the first year, BEA licensees would be entitled to mandatory reconfiguration of remaining notified incumbents upon making a showing that the BEA licensee had reached agreement for voluntary reconfiguration (or purchase of) 80 per cent of the constructed channels within the BEA.

- The requisite percentage should drop to 65 and 50 percent after the second and third years, respectively.

Third, regarding lower band allocations, the AMTA Consensus Plan urges that:

- The 150 General Category and the 80 lower SMR channels would be allocated prospectively for SMR-only use.

OneComm urges that low band SMR licensees may at any time voluntarily request BEA licensing, expand to wide-area systems, and receive extended implementation authorization.

As more fully discussed herein, OneComm generally supports the Consensus Plan because it represents an industry "center of gravity and hopefully an emerging industry consensus." In fact, OneComm supported in its initial Comments many elements of what became the Consensus Plan.¹³ While

¹² The Department of Commerce recently finalized the boundaries for 172 BEAs, as published in the February Survey of (Footnote 12 Continued)

OneComm believes that the initial position outlined in its Comments is quite workable, OneComm has been encouraged by the efforts of most industry participants to reach consensus. OneComm wants to assist the creation of a fair and workable program around that consensus. Consequently, Onecomm is modifying its earlier proposal to reflect the consensus that is developing.

III. SMR LICENSES IN THE 200 CHANNEL UPPER BAND SHOULD BE AUCTIONED AND AWARDED ON A GEOGRAPHIC BASIS IN SINGLE OR DUAL BLOCKS

Based upon the Commission's success to date with spectrum auctions, OneComm believes that they represent the most efficient and fastest way for SMR providers to obtain geographic licenses. Auctions will foster Congress' policy of "awarding licenses to those parties who value them most highly."¹⁴ OneComm notes, however, that the licenses auctioned will hold much less value where they do not include three key CMRS features: geographic licensing, contiguous spectrum, and sufficient bandwidth.

OneComm initially favored the Commission's proposal to auction licenses on an MTA basis but acknowledged that it could support, as a compromise, other forms of geographic licensing. OneComm strongly agrees with commenters urging that geographic

(Footnote 12 Continued)
Current Business, Bureau of Economic Analysis, Regional Economic Analysis Division, U.S. Department of Commerce. A map of the final BEA configurations and a listing of the BEA cities are attached as Exhibit 1.

13 Comments of OneComm at 8, 12-15 & 15-23.

licensing in the upper band is needed to develop wide-area systems and new technologies.¹⁵ OneComm continues to believe that larger sized MTA or possibly "cluster BEA" licenses are preferable, although it recognizes that PCIA strongly supported smaller geographic license conforming to BEA boundaries.¹⁶

The AMTA Consensus Plan fully responds to certain commenters' concerns that MTA licenses would be too large to allow smaller SMR operators to bid.¹⁷ OneComm thus will support licenses awarded on a BEA basis in an effort to help achieve consensus.

OneComm concurs with the Consensus Plan to encourage bidding coalitions. Management agreements, joint operating relationships, and joint ventures similarly should be permitted. These measures will encourage participation by smaller SMR system operators. OneComm urges, however, that partitioning not be permitted for areas smaller than BEA boundaries (or BTA boundaries if MTAs are used for the geographic license area). A minimum BEA service area is necessary to preserve the integrity of wide-area licenses. If licenses are partitioned into smaller areas, the Commission will find itself back in the business of licensing site-specific, or small-area SMR systems. Similarly, frequency

14 FNPRM at 38.

15 Comments of AMTA at i, 14; Comments PCIA at 2; Comments of Pittencrief Communications, Inc. at 5-6; Comments of Motorola, Inc. at 4; Comments of Nextel Communications, Inc. at 25-27; Comments of OneComm at 8, n.26.

16 Comments of PCIA at iv.

partitions should not be permitted for the same reasons.

Moreover, the PCS rules permit only geographic partitioning.¹⁸

Finally, Onecomm concurs with commenters urging that the upper 200 channels be allocated in one or two blocks.¹⁹ As OneComm argued in its Comments, splitting the 200 channels into four 2.5 MHz blocks as proposed presents significant practical problems.²⁰ Because SMR channels are not assigned now on a contiguous basis, a typical five-channel system would be spread over all four MTA (or BEA) licenses. A logistical nightmare would develop requiring all four BEA licensees to cooperate in order to reconfigure each incumbent. Moreover, spread spectrum technology would not develop as readily on 2.5 MHz blocks. In addition, if BEA licensing is implemented, a 2.5 MHz/BEA license would be inadequate to gain wide-area economies of scale. OneComm therefore urges creation of one, or at most, two blocks of 120 and 80 channels each,²¹ in the upper 200 channels. It is essential that wide area SMR providers gain sufficient bandwidth if they are to achieve regulatory parity with other CMRS providers.

17 Comments of Advanced MobilComm at 3.

18 47 C.F.R. § 24.714.

19 Comments of DialCall Communications, Inc. at 5; Comments of Nextel Communications, Inc. at 40 (one 200 channel block); Comments of CellCall, Inc. at 12-13 (two 100 channel blocks).

20 Comments of OneComm at 12-14.

IV. THE DEVELOPMENT OF CONTIGUOUS SPECTRUM REQUIRES VOLUNTARY-TO-MANDATORY RETUNING

AMTA crafted Progressive Reconfiguration (voluntary-mandatory reconfiguration) in an effort to address the concerns of small operators. Specifically, the AMTA plan relieves concern that the short time to mandatory reconfiguration proposed by Nextel would cause chaos due to inability of the incumbents to plan. Progressive reconfiguration incents wide-area licensees to secure maximum voluntary reconfiguration. The approach also ensures that incumbents will receive adequate notice prior to reconfiguration and that wide-area licensees must make a substantial showing in order to invoke early mandatory reconfiguration.

As more fully discussed below, under progressive reconfiguration, time-to market considerations will incent a BEA licensee to rapidly reconfigure most of the service area through voluntary negotiations. Progressive reconfiguration assumes, however, that some percentage of incumbents will refuse offers to reconfigure, regardless of reasonable inducement. The hold-out operators, therefore, would be subject to mandatory reconfiguration as quickly as possible. In all cases, the BEA licensee would supply comparable replacement spectrum, fully reimburse costs, and provide notice.

Time-to-market considerations are built into the concept of progressive reconfiguration and will incent wide-area SMR operators to reconfigure as quickly as possible. As

the Commission is aware, a crucial element in the competitiveness of CMRS offerings (cellular, PCS, and wide-area SMR) is the time taken to bring the full service to market. It is expected that the first carriers in a market to offer a full range of CMRS services hold a great advantage, while the last carriers to enter will be severely disadvantaged. Cellular operators hold a tremendous advantage because they have always had contiguous spectrum, and have a well-established infrastructure and customer base, all of which permit incremental introduction of PCS-like services. Wide-area SMR, by contrast, must "play catch-up" in band clearing, construction, and marketing. Wide-area SMR licensees therefore have an enormous incentive to remove any impediment to such "catch-up" efforts, and to rapidly effect voluntary reconfiguration.

AMTA's Consensus Plan ties the aggregation of contiguous spectrum to voluntary reconfiguration by setting high benchmarks prior to triggering mandatory reconfiguration. The BEA licensee must have reached agreement with 80 per cent of the constructed systems located within the BEA service area after the first year in order to trigger mandatory reconfiguration. The percentage then drops to 65 and 50 per cent after two and three years, respectively. Finally, after four years, the BEA licensee would be entitled to mandatory reconfiguration of any remaining incumbents. This schedule, combined with the notice provisions outlined below, also assures a timely end to all reconfiguration efforts, thereby

providing additional certainty to incumbents, and greater ability to meet build-out requirements.

V. INCUMBENT SMR PROVIDERS MUST RECEIVE ADEQUATE NOTICE PRIOR TO MANDATORY RETUNING

OneComm believes that the Commission must adopt a clearly defined notice procedure to allow adequate planning by incumbents and BEA licensees alike prior to reconfiguration. The Consensus Plan recommends that within six months of grant of a wide-area license, licensees must notify incumbents of the licensee's desire to reconfigure incumbents' systems. OneComm proposes a somewhat modified notification procedure that will serve the needs of both incumbent and wide-area licensee.

OneComm proposes that, once an incumbent is given notice, the BEA licensee must retune the incumbent. An exception would be made if the Commission denied the BEA licensee's showing that it has accumulated sufficient frequencies to reconfiguration. Incumbents would have a minimum of six months notice before any reconfiguration occurs. The BEA licensee would be permitted to begin reconfiguration at the end of the six-month notice period, and must complete reconfiguration within one year after the six-month notice period. An exception would be made if FCC approval of the wide-area licensee's reconfiguration showing is delayed, resulting in the BEA licensee having less time to perform reconfiguration. Therefore, if FCC approval is granted after the end of the six-month notice period, the BEA licensee would be permitted to begin reconfiguration upon receipt of such

approval and must complete reconfiguration within one year of FCC approval. This approach ensures that incumbents receive actual notice of a BEA licensee's intent to reconfigure and will permit incumbents sufficient planning time.

In exchange, wide-area licensees need some flexibility when notice must be given. OneComm proposes that notice may be given any time between (a) filing the showing of sufficient spectrum accumulation to trigger reconfiguration, at the earliest, and (b) six months after Commission approval of the showing, at the latest. Implementation of such a notice window will afford wide-area licensees flexibility to give realistic notice.

In order to provide certainty to both BEA licensee and incumbent, OneComm urges that the benchmark for determining the number of constructed channels held by all licensees in a BEA on the auction block be determined as of the date of adoption of final rules in this proceeding. The number of constructed channels in each BEA as of the final rule adoption date would provide the "bogey" against which a wide-area licensee must assemble 80 per cent of BEA channels in the second year, or 65 and 50 per cent in the third and fourth years, respectively. The "bogey" for constructed channels should be compiled from FCC records, including licensee submission of 800A forms following the adoption date, as well as extended implementation quarterly reports relevant to the benchmark date.

In order to trigger mandatory reconfiguration, the BEA licensee would be required to submit a showing demonstrating

that it has accumulated the requisite number of channels. Presumably, the showing would be placed on public notice, thereby triggering a comment and reply cycle. Incumbents would be provided ample opportunity to raise any issues regarding the BEA licensee's showing prior to mandatory reconfiguration.

**VI. NO WORKABLE ALTERNATIVE SMR LICENSING
PLANS HAVE BEEN OFFERED BY COMMENTERS**

Any SMR licensing plan adopted by the Commission must meet the public interest goals enunciated in this proceeding. No other plans presented by commenters achieve this result. SMR WON, for example, urged establishment of a Relocation Block requiring allocation of fresh SMR spectrum or wholesale refarming and rechannelization.²² Although the concept of obtaining fresh SMR spectrum is attractive, SMR WON has failed to identify either the spectrum necessary to create a Relocation Block or a plan to refarm spectrum for such a block. Similarly, SMR WON has not demonstrated that its plan is less disruptive than the AMTA plan or is achievable in the five-year time frame allotted for construction of wide-area licenses.

21 OneComm's proposal of two blocks of 120 and 80 channels each is somewhat similar to Pittencrief's proposal to allow aggregation of up to 7.5 MHz in the upper band. Comments of Pittencrief Communications, Inc. at 5-6. Such aggregation would result in two BEA license blocks of 7.5 MHz and 2.5 MHz respectively. See also Comments of Bis-Man Mobile Phone, Inc., Southern Minnesota Communications, Inc., Diamond "L" Industries, Inc., Rayfield Communications, Inc., Radio Communications Center, B & C Communications, Nodak Communications, Nielson Communications, Inc., Automated Business Communications, Inc., Bolin Communications Systems, Dakota Electronics, Raserco, Inc., Keller Communications, Inc., Deck Communications, Inc. E.T. Communications Co., and Vantek Communications, Inc. at 2-3.

Similarly, PCIA opposed any mandatory component of a voluntary-to-mandatory reconfiguration program, and urged that all reconfiguration be voluntary.²³ Practical experience demonstrates that purely voluntary reconfiguration will not yield contiguous spectrum; purely voluntary negotiation has not achieved this result in the five years that OneComm has been assembling SMR systems, and there is no reason to believe the prospective results would be different this time, particularly in light of the strong reactions exhibited in this proceeding.

**VII. LOWER CHANNEL BAND PLAN SHOULD PERMIT
LICENSEES TO ACQUIRE BEA LICENSES.**

The FNPRM tentatively concluded that eligibility rules should be revised for the 150 channels in the General Category and the 100 channels in the Industrial/Land Transportation and Business Categories ("Pool Channels").²⁴ The FNPRM also tentatively concluded that SMR and non-SMR applicants should be prohibited from applying in the future for the same channels, and sought comment on how the spectrum should be allocated to address the relative demand for SMR and non-SMR services.²⁵ Commenters were split on these issues. Some urged limited or no SMR access to intercategory sharing²⁶ and others urged

22 Comments of SMR WON at 49.

23 Comments of PCIA at 10.

24 FNPRM at 30-31.

25 Id.

eligibility requirements may be to inhibit relocation efforts requiring frequency swapping. Onecomm concurs with Motorola that "[m]aintaining the flexibility embedded in intercategory sharing is necessary to the success of reconfiguration."³²

OneComm also concurs that existing site-by-site and first-come-first-served licensing on the lower channels should be retained until after five years when reconfiguration will be largely accomplished. The current flexibility in these procedures is necessary to allow reconfiguration.

OneComm recognizes, however, that SMR licensees in lower band channels may wish to establish their own wide-area systems. In response to smaller SMR operators' concerns that they "will [not] be able to participate in the new licensing framework,"³³ OneComm urges that SMR systems in lower band channels be allowed to expand to wide-area systems and to form joint ventures or consortia to obtain BEA licenses. OneComm urges therefore, that for the first five years after the implementation of a new licensing scheme, the primary licensing regime in these channels should be site-by-site licensing, but that licensees also may (1) receive wide-area authorization, (2) receive extended implementation authorization, and (3) voluntarily group together to apply for BEA licenses that could then be aggregated into block licenses. After the original license period all licenses should be auctioned on a BEA basis.

31 Comments of The American Petroleum Institute at 4, Comments of APCO at 3.

32 Comments of Motorola, Inc. at 17.

VIII. GEOGRAPHIC LICENSEES SHOULD HAVE A FIVE-YEAR CONSTRUCTION PERIOD WITH APPROPRIATE COVERAGE BENCHMARKS.

Commenters substantially supported the Commission's tentative conclusion that geographic licensees should be granted five years to construct wide-area systems.³⁴ OneComm concurs that MTA (or BEA) licensees should have five years to meet construction requirements.

OneComm urges that coverage requirements track other CMRS service requirements by requiring coverage of one third of the population or geography in three years and two thirds within five years.

IX. EXISTING CONSTRUCTION AND IMPLEMENTATION SCHEDULES SHOULD BE HONORED

In response to the Commission's inquiry whether current extended SMR implementation periods should be curtailed or required to be re-justified by the licensee,³⁵ commenters substantially supported honoring existing implementation schedules.³⁶ OneComm concurs with DCL Associates that "[a]ny retroactive reduction or elimination of extended implementation periods previously granted would so shake the SMR industry's confidence in the Commission" as to endanger auction of SMR frequencies.³⁷ Extended implementation schedules are placed as

33 Comments of Chadmore Communications, Inc. at 5.

34 NPRM at 27.

35 Id. at 28.

36 Comments of American Industrial & Marine Electronics, Incorporated at 3, Comments of DCL Associates, Inc. at 2, and Comments of PCIA at 14, n.10.

conditions on licenses and have been relied upon by licensees, and they must be honored. The extended implementation program has worked well in facilitating development of wide-area systems, contrary to commenters' overstated warehousing complaints.³⁸ For its part, OneComm has invested hundreds of millions of dollars assembling and diligently constructing wide-area systems in Denver, Colorado; Seattle, Washington; Portland, Oregon; the Interstate-5 corridor between Seattle and Portland; Kansas City, Kansas and Missouri; Saint Louis, Missouri; Oklahoma City, and Tulsa, Oklahoma; and Wichita, and Topeka, Kansas. There is no economic or business incentive whatsoever for OneComm to warehouse spectrum, but there is every need for OneComm to hold extended implementation grants to successfully build out its systems.

The initial construction period of wide-area SMR systems is analogous to the early years of cellular system construction. A monitoring of licensed cellular channels during the first years of cellular build-out schedules likely would have shown some unused licensed channels. Yet cellular systems were largely constructed and providing service over the licensed frequencies prior to their construction deadlines. Therefore, commenters are merely observing a characteristic of large system construction when they complain that channels licensed to wide-area systems are not yet being used.³⁹

37 Comments of DCL Associates, Inc. at 2.

38 See Comments of Fresno Mobile Radio, Inc. at 1-2.

Moreover, the Commission already has engaged in reasoned deliberations on this issue when it amended Section 90.629 in its extended implementation docket.⁴⁰ Extended implementation schedules have sufficient "regulatory teeth" to prevent warehousing, with schedules that run for a maximum of five years, that must be justified by the applicant's affirmative showing, and that require annual certification that the proposed schedule is being met.⁴¹ By comparison, the five-year implementation period matches the proposed MTA license construction period which, as noted above, received substantial support from commenters. Therefore, contrary to suggestions of some commenters, the extended implementation program is designed to ensure that licensees move expeditiously to full construction. There is simply no basis for eliminating this well-conceived program.

39 See Comments of American Industrial & Marine Electronics at 2.

40 Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, 8 FCC Rcd 3975 (1993).

41 Id.

CONCLUSION

The Commission is at an important crossroads in its efforts to implement regulatory parity for the SMR industry and to ensure vigorous competition among all CMRS providers. The Commission will most effectively stimulate such competition by ensuring geographic-based licensees, contiguous spectrum effected through progressive reconfiguration and sufficient blocks of spectrum.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael R. Carper" followed by a stylized flourish or initials.

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